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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/876,445	06/07/2001	Aries Lec	67,200-418	9171

7590 06/07/2004

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EXAMINER
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NAHAR, QAMRUN

ART UNIT	PAPER NUMBER
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2124

DATE MAILED: 06/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 09/876,445	Applicant(s) LEE ET AL.	
	Examiner Qamrun Nahar	Art Unit 2124	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 07 June 2001.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 June 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>6/7/01</u> . | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

1. Claims 1-11 have been examined.

#### *Information Disclosure Statement*

2. The information disclosure statement (IDS) filed on 6/7/01 is being considered by the examiner.

#### *Claim Rejections - 35 USC § 102*

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-11 are rejected under 35 U.S.C. 102(e) as being anticipated by Kravitz (U.S. 6,397,385).

#### **Per Claim 1:**

The Kravitz patent discloses:

- **a method for upgrading a computer system** ("The present invention is a method and apparatus for performing a live upgrade of the software running on a continuously operating system, such as for example, a telecommunications system, without interrupting the operation of the system." in column 2, lines 32-36)

- **providing a computer system having associated therewith an upgrade management utility, the upgrade management utility providing for a buffering of a series of incoming requests to the computer system when upgrading the computer system while operating the computer system, to thus provide an uninterrupted idle state when upgrading the computer system when operating the computer system; executing the upgrade management utility when operating the computer system to effect uninterrupted idle state; upgrading the computer system within the uninterrupted idle state to provide an upgraded computer system while accumulating a series of buffered incoming requests** (“In order to maintain the integrity of the activation operation, it is desirable that the code fragment which is being overlaid with the load-address-and jump instruction is not actually executing at the moment the activation occurs. There are several ways in which to accomplish this. One embodiment of the invention includes building the activation routine as the lowest priority software task in the computer. This means that no other task is then executing, so that code, which is then executing, will not be inadvertently over-written. Specifically, in the illustrative embodiment, the upgrade start task 448 is identified as the lowest priority task on the board. The upgrade start task 448 runs when the other tasks have already run. Then, the upgrade start task 448 is given control of the processor; it locks out the other software for the short interval it takes to do the instruction overlay. Thus, the operation of overlaying an activation instruction sequence does not interfere with, or cannot be interfered with by, other software running on the computer.” in column 10, lines 53-67 to column 11, lines 1-3)

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**- and terminating the upgrade management utility after upgrading the computer system within the uninterrupted idle state and releasing the series of buffered incoming requests for operation within the upgraded computer system** ("When the upgrade start task 448 has control of the processor, the CPU saves away the old address, overlays the new address and jump instruction so that the upgrade can be accessed. Then, interrupts are re-enabled and control of the CPU is given up. At this point, the upgrade has been validated, downloaded and activated while the overall system continuous operation without interruption. ... A query command can be generated by the host in which the host 4 queries the matrix card 400 for a list of upgrades that have been downloaded and whether those upgrades have been activated for each card in the node. The system monitor 450 can access the per card base load status 452 and the card upgrade status 454 and report a list of upgrades and base loads running on each card to the host 4." in column 11, lines 8-21).

**Per Claim 2:**

The Kravitz patent discloses:

**- wherein the computer system is operated within a facility selected from the group consisting of chemical fabrication facilities, mechanical fabrication facilities and electrical fabrication facilities** (column 5, lines 4-29 and column 11, lines 49-56).

**Per Claim 3:**

The Kravitz patent discloses:

- wherein the computer system is operated within a microelectronic fabrication facility

(column 5, lines 4-29 and column 11, lines 49-56).

**Per Claim 4:**

The Kravitz patent discloses:

- wherein the upgrade management utility is resident within the computer system (column

10, lines 53-67 to column 11, lines 1-3).

**Per Claim 5:**

The Kravitz patent discloses:

- wherein the upgrade management utility is not resident within the computer system

(column 9, lines 31-53).

**Per Claim 6:**

The Kravitz patent discloses:

- wherein the computer system is upgraded with an upgrade selected from the group

consisting of software upgrades, firmware upgrades and hardware upgrades (column 10,

lines 3-10).

**Per Claims 7-11:**

These are system versions of the claimed method discussed above (claims 1-5, respectively), wherein all claim limitations also have been addressed and/or covered in cited areas as set forth above. Thus, accordingly, these claims are also anticipated by Kravitz.

***Conclusion***

5. Any inquiry concerning this communication from the examiner should be directed to Qamrun Nahar whose telephone number is (703) 305-7699. The examiner can normally be reached on Mondays through Thursdays from 9:00 AM to 6:30 PM. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kakali Chaki, can be reached on (703) 305-9662. The fax phone number for the organization where this application or processing is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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QN

May 27, 2004

*Kakali Chami*

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